



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

JRE  
Docket No: 6796-01  
10 May 2002

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: FORMER [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was retired by reason of physical disability, with a rating of at least 30%.

2. The Board, consisting of Messrs. Harrison, Shy and Zsalman, reviewed Petitioner's allegations of error and injustice on 25 April 2002 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner was evaluated by a medical board on 7 August 1997, and was given diagnoses of bipolar disorder, type I, most recent episode major depression; and alcohol dependence, unspecified. The medical board report indicates that he was "no longer considered fit for full duty", and that he required continued mental health management and treatment, to include medication and psychotherapy. On 9 October 1997, the Physical Evaluation Board (PEB) made preliminary findings that he was unfit for duty because of the bipolar disorder, which it rated at 10%. Petitioner accepted those findings on 24 November 1997, and he was discharged with entitlement to disability severance pay on 28 February 1998. He completed more than 16 years and 6 months of active duty service. He submitted a claim for disability benefits to the Department of Veterans Affairs (VA) on 16 November

1998. On 8 July 1998, the VA awarded him a 70% rating for his mental disorder, as well as 10% for a low back condition, 10% for tinnitus, and 0% for a scar, for a combined rating of 80%, effective from 1 March 1998. The ratings were based on a review of military records, and the results of VA examinations conducted on 31 December 1998 and 5 January 1999. Of particular note is the fact that he had not sought psychiatric treatment or medication since his discharge from the Marine Corps, and that his condition had deteriorated since that time.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that in view of Petitioner's continuous need for psychotherapy and psychotropic medication at the time of his discharge, and that his symptoms were not completely controlled by medication, a 30% rating more accurately reflects the degree of impairment caused by his mental disorder, than does the 10% rating he was assigned by the PEB. Accordingly, and after resolving doubt in Petitioner's favor, the Board finds the existence of an injustice warranting the following corrective action.

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged from the Marine Corps on 28 February 1998.

b. That Petitioner's naval record be further corrected to show that the Secretary of the Navy found him unfit to perform the duties of by reason of physical disability due to bipolar disorder, type I, which was incurred while Petitioner was entitled to receive basic pay; that the disability is not due to intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; that the disability is considered to be ratable at 30% in accordance with the Standard Schedule for Rating Disabilities in use by the Department of Veterans Affairs at the time the Secretary found Petitioner unfit, Code Number: 9432 ; and that accepted medical principles indicate the disability is of a permanent nature, accordingly, the Secretary directed that Petitioner be permanently retired by reason of physical disability effective 1 March 1998, pursuant to 10 U.S. Code 1201.

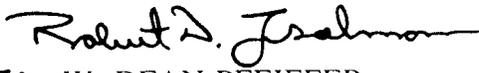
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
JAMES R. EXNICIOS  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

  
for W. DEAN PFEIFFER  
Executive Director